
DISPUTE RESOLUTION MODELS AND LAND USE

Backgrounder to First Principle #30

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February 2002

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MAINLAND
TREATY
ADVISORY
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1. Introduction

Alternative Dispute Resolution (ADR) tools have been used with frequent success in labour, residential tenancy, environmental, land use and commercial disputes for the past 10 years in BC. Increasingly, other types of conflicts are also being resolved through ADR. In 1995 a supportive framework was put in place when the Local Government Act was amended to introduce ADR measures to resolve growth management disputes between Local Governments. With further amendments to the Local Government Act in 2000, ADR has been extended to Regional District services¹. There are some ADR models from within BC, as well as, other provinces that may be worth exploring to extract successful examples to learn from. This paper will specifically refer to two models, the Nisga'a Final Agreement and the Alberta Inter-municipal Dispute Resolution Initiative.

2. Purpose

This paper is an attempt to better understand if there are any existing dispute resolution models that might help resolve disputes over land use between Local Governments and First Nations. In urban areas, there is much pressure to reduce or restrict land development. In some communities, there is a 0% growth policy. This poses a real challenge for future self-governing First Nations who want to develop their lands for socio-economic projects. While it is unrealistic to think that self-governing arrangements in urban areas will be developed easily and without conflict, it is important to begin now to develop workable systems for dispute resolution between Aboriginal and Local Governments. Several researchers are confident that a process can be created within which the inevitable planning and development conflicts between Local Governments and First Nations can be resolved amiably and economically².

Self-governing arrangements will have to address the relationship between urban governing institutions and other Aboriginal and non-Aboriginal governments. Effective relationships are particularly important for urban governments, which will likely have frequent interaction with surrounding non-Aboriginal and Aboriginal governments.

3. Context for Land Use Disputes

In this highly interactive metropolitan region of the Lower Mainland, neighbouring jurisdictions have many interests in common. Despite this, conflict inevitably occurs. Even as different Local Governments strive to achieve the same goals, for example, strong economic growth, low property tax rates, and high quality of community life, they may come into conflict with one another. Land use proposals that are an economic benefit to one community may be viewed competitively by another municipality seeking similar development. Alternatively, aggressive economic development may be viewed as impacting the other community's goal for a high quality living environment if residential neighbourhoods or parks are paralleled by industrial areas.

Local governments in British Columbia have raised issues in relation to the absence of a supervisory senior government scheme because there is no common operating framework for Local and First Nation Governments, such as is provided to Local Governments by the *Local Government Act*. In

¹ Ministry of Community, Aboriginal and Women Services: Local Governments Policy and Research Branch, *Reaching Agreement on Regional Service Review and Withdrawal Disputes* (2001), p.6.

² Intermunicipal ADR Design Team, *A Process for Resolving Intermunicipal Planning Issues* (August 2000), p.4.

addition, treaty negotiations highlight the need to explore land use co-ordination and related issues because their conclusion will most likely bring increased activity of First Nation lands largely for the purposes of economic development. Therefore it is crucial to develop mechanisms for resolving land use disputes in an effective and amicable way.

LMTAC has created among its First Principles, principle 30 that states:

“Treaties should include an effective dispute resolution mechanism that is accessible to Local Governments, particularly relating to interjurisdictional issues such as, but not limited to: planning, land use, natural resources, growth management, stewardship and transportation³”.

Underlying this principle are more detailed LMTAC interests 4.2.8 Land Management:

“Treaties must include a specific process for dealing with land use designations that are perceived as incompatible by neighbouring communities, whether for environmental, design, safety, or other reasons. In particular, an effective dispute resolution mechanisms is needed to address zoning decisions that have transboundary impacts⁴,” and

“Dispute resolution on planning issues should include a public hearing process that involves more than merely consultation. Such a process must ensure that Local Governments and First Nation governments work cooperatively as community partners.⁵”

What is clear from the current situation is that although draft treaty provisions typically include a dispute resolution chapter, it only applies to the three principal parties and refers only to disputes over the interpretation of the agreement. As a result, Local Government involvement is absent from dispute resolution provisions because they will not be signatories to the Final Agreement. In the event that a dispute does arise between Aboriginal self- governments and neighbouring jurisdictions, it is important to note that Local Governments are not an equal party to treaty dispute resolution mechanisms. At this time it can only be speculated whether Local Governments would have to rely on the goodwill of the Province to act on its behalf for initiating a resolution.

In defining what is lacking with respect to policy on land use co-ordination, an experienced practitioner in the field states:

“The problem is how to achieve harmonious land use planning between two neighbouring but independent jurisdictions in the absence of a supervisory senior government scheme. There is a need for a system of establishing land use compatibility which treats both the First Nation and the surrounding local government, for the purposes of land use planning as equals.⁶”

Policy development on First Nations- Local Government land use co-ordination in a post- treaty environment is vitally important because of the current void in this area. While there has been a number of comprehensive studies on service agreements between Local Governments and First

³ Lower Mainland Treaty Advisory Committee, *Considerations: A Guide to Lower Mainland Area Local government Interests in Treaty Negotiations* (July 2000), p.13.

⁴ LMTAC *Considerations* p.20.

⁵ LMTAC *Considerations* p.20.

⁶ Theresa M. Dust, “Economic Development on Aboriginal Lands and Land Use Compatibility”, November 1998, quoted in Union of British Columbia Municipalities, *Land Use Coordination, Servicing and Dispute Resolution: Towards Certainty for Local Government Through Treaty Negotiations* (October 2000) p.3.

Nations, and examples of successful intergovernmental relations documented, the subject of land use co-ordination has not received much attention. For this reason, the issue of co-ordination of land- use between local governments and First Nations was identified by the UBCM Executive as a priority policy development area in 2000. The UBCM stated:

“Co-ordinating the use of and between neighbouring communities is fundamental to maintaining harmonious relationships, providing services efficiently, and planning for compatible future development...[it is] key to post- treaty relations at the local level, particularly in more densely populated regions.”⁷

The UBCM outlined principles and recommendations for achieving co-ordination of land use, efficient service delivery and effective resolution of disputes between Local Governments and First Nations post- treaty. Important to dispute resolution, the UBCM states that in some areas, it will be essential that dispute resolution measures are agreed to prior to finalization of the treaty. The UBCM suggests:

“An agreed to dispute resolution process is an essential part of co-ordination arrangements, since it provides closure should other attempts to co-ordinate land use and related activities fail. It also prevents unresolved conflict persisting long term.”⁸

The UBCM, *Land Use Coordination, Servicing and Dispute Resolution*, paper provides an important first step in identifying the current void regarding post –treaty dispute resolution mechanisms and their availability to Local Governments should a dispute arise between Local and First Nation Governments. However, the purpose of the UBCM paper is to establish principles and make recommendations on the successful negotiation of co-ordinated land use between Local Governments and First Nations. Therefore, it is necessary for LMTAC to undertake policy research that focuses specifically on dispute resolution mechanisms that may be used by Local Governments for engaging with First Nation Governments to bring resolution to disputes.

4. The Concept of Alternative Dispute Resolution (ADR)

The term Alternative Dispute Resolution (ADR) typically refers to any method of resolving disputes that uses a consensus or interest- based model. It often includes any process outside of the appeal and court systems, where disputing parties come to mutual agreement on a solution or without the assistance of a third party.⁹ Arbitration, mediation and negotiation are the most common types of dispute resolution and offer disputants an alternative to the courts that is more effective in determining an outcome for the litigants.¹⁰ In more current usage, the acronym ADR is sometimes interpreted to mean “Appropriate Dispute Resolution”. This may be better suited to the present purpose, since all participants acknowledge the need for and importance of appeal and court mechanisms. Clearly, the use of principled, interest- based processes to resolve issues in no way diminishes the legislated rights of parties to judicial or quasi- judicial appeals.¹¹

There are a number of techniques that can be employed to assist in resolving conflicts. The following definitions are an attempt to provide a common point of reference for discussion of these techniques as they might be applied in the domain of public decision-making.

⁷ UBCM, *Land Use Coordination, Servicing and Dispute Resolution* (October 2000) p.3.

⁸ UBCM, *Land Use Coordination, Servicing and Dispute Resolution* (October 2000) p. 22.

⁹ Intermunicipal ADR Design Team, p.6.

¹⁰ Behrendt, Larissa, *Aboriginal Dispute Resolution* (Annandale: Federation Press, 1995), p. 52.

¹¹ Intermunicipal ADR Design Team, p.6.

Bargaining

- Refers to a process whereby two or more parties reach an accommodation acceptable to those parties.¹²
- The bargain usually involves one or more of the parties undertaking to do or not do certain things.

Consultation

- Is the basis of a variety of procedures referred to by such terms as “public participation” and “public involvement”. Methods range from public hearings and requests for written submissions to more interactive techniques such as workshops and advisory committees.
- The main feature is that the locus of the decision remains with an established decision- maker and the degree to which the decision is influenced is at the discretion of the decision- maker.

Direct Negotiation

- An unassisted, face to face, interest- based negotiation process between directly involved parties aimed at identifying the issues and developing a mutually agreeable solution.¹³

Facilitation

- Least intrusive of these methods. Refers to the task of managing discussions in a joint session.¹⁴
- Attempt by a third party neutral to reduce tensions, improve communications, and help parties agree to a process to resolve the dispute.¹⁵
- The facilitator does not make decisions on substantive issues.¹⁶

Conciliation:

- A neutral third party talks to the disputants separately, to diffuse emotions, identify common ground, and perhaps to bring the parties back to the table or to find an agreeable solution.
- The conciliator does not make decisions on substantive issues.

Arbitration

- Similar to traditional adjudication except that the third party neutral is selected by the parties and is empowered to decide disputed issues after hearing evidence and arguments presented by the parties.
- The arbitration decision may be binding or non- binding, either through agreement or operation of law, or mandatory (imposed by a court or by legislation).¹⁷

Fact-finding

- The determination of facts behind a dispute and the basis for its resolution.
- The fact-finder will gather arguments from the disputing interests and usually present them in a report, along with recommendations he or she may have regarding a settlement.
- Non-binding, purely advisory.¹⁸

¹²Report of the Dispute Resolution Core Group of the British Columbia Round Table on the Environment and the Economy, *Reaching Agreement: Consensus Processes in British Columbia* (1991) p.8.

¹³ Intermunicipal ADR Design Team, p.28.

¹⁴ Report of the Dispute Resolution Core Group, p.9.

¹⁵ Report of the Dispute Resolution Core Group, p.9.

¹⁶ Intermunicipal AR Design Team, p.28.

¹⁷ Intermunicipal AR Design Team, p.29.

Mediation

- This technique has probably been used most in environment/economy disputes.
- Negotiation with the assistance of an independent party. The fundamental difference between negotiation and mediation is that mediation has the presence of an impartial third party who has the role of assisting parties towards the agreement.¹⁹
- Critical to mediation is the relationship between the mediator and the parties at interest. That relationship has four critical dimensions.
 - 1.) independence from the parties and the immediate issues in dispute;
 - 2.) mutual acceptability to the parties
 - 3.) a focus on the process not the substance of the negotiations
 - 4.) assisting in finding a settlement mutually acceptable to the parties. The content of the settlement, however, is the responsibility of the parties.²⁰

4.1 Advantages to Using ADR

The increased use of ADR processes is a response to the recognition of the inadequacy of litigation in certain circumstances. It is a recognition of the fact that parties often have to live together with a decision because there is an ongoing relationship between them.²¹ ADR methods avoid the win/lose outcome of court litigation and can achieve more creative and flexible results. In addition, parties benefit by saving time and decreasing the costs of resolution; as ADR processes are often less expensive than litigation.

Involving the knowledge and expertise of stakeholders in finding a solution leads to greater commitment to whatever decision is reached. Greater creativity, increased resources, and a broader range of potential solutions are made available in a consensus approach relative to other modes. The parties can achieve a greater understanding of resource management choices and their implications, and some empathy for the dilemmas that resource managers face on a day-to-day basis. Furthermore, the process of seeking consensus builds working relationships among interests that may otherwise never have the opportunity to work together or learn the others' points of view.²²

Mediation is the form of ADR perceived to be the most appropriate for use in Aboriginal communities and is the process that is implemented most often. There are many advantages to mediation, such as:

- Encourages exchanges of information,
- Provides new information
- Helps parties to understand each other's views
- Helps negotiators realistically assess alternatives to settlement
- Encourages flexibility
- Shifts focus from the past to the future
- Stimulates the parties to suggest creative settlements
- Invents solutions that meet the fundamental interests of all parties²³

¹⁸ Report of the Dispute Resolution Core Group, p.9.

¹⁹ Behrendt, p.59.

²⁰ Report of the Dispute Resolution Core Group, p.9.

²¹ Behrendt, p.52.

²² Report of the Dispute Resolution Core Group, p.6.

²³ See: Goldberg, Sanders and Rogers, *Dispute Resolution: Negotiation, Mediation and other Practices*

Mediation is also heralded for “its ability to promote a new way of communication which respects differences and encourages understanding. It allows an ongoing relationship to be preserved. This is especially important where disputants will have to continue to live closely with each other.”²⁴ Similarly, the Ministry of Community, Aboriginal and Women’s Services (CAWS) suggests that mediation substantially changes the character and timing of settlements. Mediated settlements tend to be more truly collaborative and enduring, and help maintain an ongoing working relationship between the parties.²⁵

4.2 Possible Disadvantages of Using ADR

A perceived disadvantage of ADR approaches that attempt to reach consensus is that they can initially be time- consuming, costly, and frustrating to government, industry or any other interest that simply want to “get on with the job”. Making a decision unilaterally, with a measured amount of consultation, can be quick and efficient. For many types of routine decisions, this approach may be acceptable.²⁶

However conflict is present within BC as groups compete for access to limited natural resources for various purposes. Conflict situations are taxing traditional decision-making processes, and more decisions coming out of these processes are being protested, appealed or ignored. Unresolved conflicts are having an effect on the Province. Appeal processes, court cases and civil disobedience are generating enormous financial costs and increase uncertainty. Therefore, the short term costs of resolving conflicts by consensus may be high, but the long term costs of the alternatives are significantly higher.²⁷

4.3 ADR Framework Considerations

In order to ensure that ADR processes do not unduly prolong reaching a resolution, the parties could jointly discuss such things as timelines, responsibility for paying the costs, the need to co-ordinate deadlines, and the scheduling of a hearing should the discussions be unsuccessful.²⁸ An agreed upon “fallback” mechanism may be designed if consensus is not achievable.²⁹ However, in most cases, parties are willing to enter into ADR in good faith with the intention to simplify issues, to resolve them, and to achieve more satisfaction at lower costs in time and money.

The framework should also include the *values* and *principles* for effective ADR such as:

- Use interest- based approaches wherever possible
- Voluntary participation of parties with decision- making authority.
- Responsibility for the resolution of the dispute rests with the parties themselves
- Equal opportunities to information and participation
- Right to withdraw from the mediation

²⁴ Myers and Filner, *Mediation Across Cultures: A Handbook About Culture and Conflict*

²⁵ See: Ministry of CAWS, *Reaching Agreement on Regional Service Review and Withdrawal Disputes* (2001).

²⁶ Report of the Dispute Resolution Core Group, p.6.

²⁷ Report of the Dispute Resolution Core Group, p.7.

²⁸ *A Reference Manual for Municipal Development and Service Agreements*, p.57-58

²⁹ Report of the Dispute Resolution Core Group, p.5.

- Build in an assessment component to the design process. There is no one dispute mechanism that will handle all disputes; moreover, some disputes may result from deep-rooted conflict that may not be resolvable through the use of conventional ADR techniques.
- Recognize the importance of prevention
- Develop rights-based mechanisms that are low cost, flexible and minimize the damage to relationships when interest-based approaches do not work or are not appropriate
- Realistic deadlines
- Ensure that the design calls for ongoing maintenance, feedback and re-evaluation of the dispute settlement system
- Empower future participants to assist the design of the system so that it reflects their culture and priorities.³⁰

4.4 Communicating to Prevent Disputes³¹

The reality of inter-governmental relations is that there will be divergent goals, objectives, standards, attitudes and expectations between Local Governments and self-governing First Nation communities. A key aspect of developing a dispute resolution system is to examine and act upon opportunities for preventing a potential conflict situation from becoming a formal dispute. Ordinarily, strategies that prevent disputes or limit the chances of escalation are “most cost-effective and they should be rigorously exercised at the earliest possible opportunity.”³²

Inter-governmental conflict emerges from a complex environment of social and cultural values and expectations, economics and politics. Each Local Government and First Nation community share some attributes with each other. However, each also differs from the other in important respects. Awareness of each other’s unique qualities creates understanding, less reliance on assumptions that may or may not be accurate and a sounder base for the decisions we make about how to work together.

5. Experiences in Other Jurisdictions

The creation of a comprehensive system designed to facilitate mutually beneficial issue resolution is largely untested in the field of inter-municipal relations, not to mention relations involving First Nation and Local Governments. Clearly, Local Governments are being asked to become more co-operative and collaborative, but there are few precedents for how to achieve that worthy objective. This represents an opportunity for Local Governments and First Nations to break new ground and show leadership and creativity in the development of processes capable of handling a range of inter-governmental issues, both complex and straightforward.

The intent behind reviewing both the Nisga’a Final Agreement and the Alberta Inter-Municipal Dispute Resolution Initiative is to illustrate how ADR mechanisms may be used for various types of disputes. The potential exists for Local Governments to adopt similar ADR models for land use planning and related inter-governmental matters.

³⁰ The Institute On Governance, *Dispute Resolution Systems: Lessons From Other Jurisdictions* (March 12, 1999) p.13.

³¹ See Appendix A for further reference materials on preventative measures.

³² Intermunicipal ADR Design Team, p.10.

5.1 Nisga'a Final Agreement

The recent Nisga'a Final Agreement has been suggested by some to be the most sophisticated dispute resolution system of all the claims and self- government agreements thus far.³³ The Institute on Governance has suggested that it would be a good starting point for other negotiating tables.³⁴ For this reason and the fact that it involves three levels of government make it worthy of special attention in the context of this paper.

The dispute resolution chapter, Chapter 19, of the Nisga'a Final Agreement begins with a statement of four objectives, shared by the three parties:

- “a. to cooperate with each other to develop harmonious working relationships;
- b. to prevent, or, alternatively, to minimize disagreements;
- c. to identify disagreements quickly and resolve them in the most expeditious and cost- effective manner possible;
- d. to resolve disagreements in a non- adversarial, collaborative, and informal atmosphere.³⁵”

The parties further acknowledge their desires and expectations that most disagreements will be resolved by “...informal discussions between or among the Parties, without the necessity of invoking the Chapter.³⁶” Those disagreements not resolved informally will progress through the following three stages:

Stage One

Collaborative Negotiations

- can be initiated by any party following informal negotiations;
- notice given to other parties;
- a party not directly engaged may participate
- parties agree to disclose sufficient information, appoint representatives with sufficient authority and negotiate in good faith

Stage Two

Mediation

Technical Advisory Panel

Neutral Evaluation

Elders and Advisory Council

Any other non- binding process

- must go through collaborative stage first;
- can be initiated by any of the parties;
- a party not directly engaged in the disagreement may participate;
- each process has carefully laid out procedures in its own annex

³³ Intermunicipal ADR Design Team, p.23.

³⁴ Institute on Governance, *Policy Brief No. 4: Building Trust: Capturing the Promise of Accountability in an Aboriginal Context* (May 1999) p.5.

³⁵ *Nisga'a Final Agreement*, p.233.

³⁶ *Nisga'a Final Agreement*, p.234.

Stage Three

Binding Arbitration

Judicial Proceedings

- arbitration can be initiated by one party if specifically called for in the Agreement; otherwise all affected parties must agree;
- must complete stages one or two unless otherwise specified

Costs:

Except where provided otherwise, each party is to bear the costs of its own participation, representation, and appointments in collaborative negotiations, a facilitated process, or an arbitration. Each party is also expected to equally contribute to the costs of such things as; fees to neutrals, cost of meeting rooms, expenses of neutrals, costs of required administration support for neutrals and administration fees of a neutral appointing authority.³⁷

Program Highlights:

- the emphasis as set out in the objectives is on interest- based approaches;
- a low cost, customized rights- based approach (binding arbitration) is provided for;
- there is a clear path from one stage to the next, minimizing disputes about process;
- prevention is emphasized
- an assessment has been made of the type of disputes that may occur and different ADR mechanisms have been matched to each type; and
- the process is not simple but is likely appropriate to the main users- public servants and politicians.

5.2 Alberta Inter-municipal Dispute Resolution Initiative

In a collaborative spirit, four municipalities- Sturgeon County, City of Edmonton, City of St. Albert and Town of Morinville- and Alberta Municipal Affairs have developed an ADR system for identifying and resolving inter-municipal issues. The primary focus is on inter-municipal land use planning related disputes. Nevertheless, it is anticipated that the dispute resolution system developed through this project can be applied or adapted to other types of disputes.³⁸

The system facilitates the early identification and assessment of potential dispute situations, and outlines a four step procedure that the municipalities can follow to resolve issues. It is probable that, in most dispute situations, other stakeholders will also be involved, each of which will have its own set of interests. This may include, for example, developers, residents, special interest groups, other levels of government to government agencies. In any given dispute situation, these stakeholders will, as appropriate to the situation, be involved in refining and detailing the elements of the process to be followed and in clarifying their interests in the issue.³⁹

³⁷ *Nisga'a Final Agreement*, p.240.

³⁸ Intermunicipal ADR Design Team, p.1.

³⁹ Intermunicipal ADR Design Team, p.5.

A high priority is placed on methods that help prevent issues from escalating into disputes. This is accomplished by a commitment to an interest- based protocol for communication and collaboration⁴⁰, allowing for pre-application consultations to facilitate early identification of issues, and encouraging a high degree of self- reliance in finding solutions.

Step One:

- Voluntary process
- Non-obligatory, but strongly recommended pre- application consultation stage to allow information and process requirements to be clarified. Public consultation may also be considered at this stage
- Initiated when one party requests a meeting with Alberta Municipal Affairs staff member
- First consultation determines if dispute can be best resolved through mediation
- If mediation viable, parties then submit written requests to department for financial assistance to retain private sector mediator.

Step Two:

- Formal review step commences once an application requiring a decision is submitted. The internal review process and the inter-municipal referral process, if required, will proceed in tandem.
- The goal is to resolve issues to the satisfaction of all parties such that the approving authority can make its decision with the expectation that no appeal will be launched.
- Municipal partners are committed to using the most appropriate interest- based resolution processes (direct negotiation, facilitation and mediation) at this stage to resolve issues between them.
- Which specific method will be selected from the tool-kit in any given instance will depend on several factors:
 - The type of issue (plan or policy; land use bylaw; subdivision; development proposal; infrastructure proposal);
 - The type of dispute (factual; procedural; corporate values; professional opinion);
 - Which objectives are important to the specific situation (for example, prevention; control over decision or outcome; cost effectiveness; timeliness; need to work together in the future; need for a precedent).

Step Three:

- After a full review process by all parties to resolve issues a decision point is reached
- Parties normally agree that the results may not be used in any other hearing or process without the consent of all parties
- The results of the discussions are only binding to the extent that all parties agree
- If issues remain unresolved at this point, legislated rights of an affected municipality or other stakeholder or the applicant may be exercised. Parties can proceed to a hearing by the Municipal Government Board (where that option is available), the courts, or other means of dispute resolution.
- The subsequent appeal process can be enhanced if, as a result of their negotiations, municipalities have developed a clear understanding of which issues have been settled and where their difference remain.

Step Four:

- Debrief and evaluate the issue resolution process on a case by case basis.

⁴⁰ The protocol outlines fundamental ways of doing business that focus on building good will and communicating in ways that promote understanding, maximize control over outcomes and strive for solutions that represent mutual gains for all participants.

Financing:

The Inter-municipal Dispute Resolution Initiative is designed to provide financial assistance to municipalities to cover the cost of mediators. In order to facilitate the mediation process, the Municipal Affairs Department offers a roster of qualified private sector mediators. However, parties do not have to choose from this list. In the end, the selection of the mediation team is left up to the parties involved.

Program Highlights:

The Municipal Affairs Department of Alberta can work with municipalities involved in inter-municipal disputes. Program highlights include:

- Alberta Municipal Affairs will work with municipalities to determine whether or not disputes are suitable for mediation, or determine if another form of dispute resolution is more applicable.
- Alberta Municipal Affairs will work with municipalities to ensure that all the necessary prerequisites are in place to convene a dispute resolution process.
- Alberta Municipal Affairs has created a roster of qualified private sector mediators available for work.
- Working in consultation, or partnership, with a specific municipality or with a number of municipalities, Alberta Municipal Affairs can design situation specific dispute resolution training programs, including preparation for mediation, best practices for municipalities, when to use mediation, etc.
- Where appropriate, the department provides funding, on a proportional basis, to the parties to cover the cost of retaining the private sector mediator(s)

6. Conclusions

Local Governments and First Nations have the opportunity to improve upon the use of lands within their jurisdiction by ensuring their land uses are co-ordinated. Negative aspects of rapid community growth can be mitigated by both governments co-operating together and sharing information on projected uses of lands. However, it is reasonable to assume that just as Local Governments may demonstrate varied interests regarding land use, similar circumstances may arise between neighbouring urban Local and First Nation Governments post treaty. Treaty negotiations highlight the need to explore land use issues because their conclusion will most likely bring increased activity of First Nation lands for the purposes of economic development. Due to the current fact that Local Governments are currently not signatories to Treaties, it is crucial to begin now to develop mechanisms for resolving land use disputes in an effective and amicable way. The development of effective intergovernmental relations will be essential to ensuring that Aboriginal self- government is workable, and effort spent in the early stages to develop good intergovernmental relationships will pay off in all of the subsequent stages of development.

ADR mechanisms have been used more frequently in recent years with demonstrated success. The two models discussed in this paper, the Nisga'a Final agreement and the Alberta Inter- municipal Dispute Resolution Initiative, provide possible models that Local Governments may find educational and worth integrating into their own initiatives. Research provides ample evidence that ADR processes can achieve more creative and flexible results, while saving time and decreasing costs than litigation. Successful use of such processes may also reduce the need for more formal remedies or narrow the

scope of issues to be adjudicated. Resolving issues through consensual and less adversarial approaches allows for open and positive intergovernmental relationships between Local and First Nation Governments to continue into the post- treaty context.

APPENDIX A:

Burton, J. (1990). *Conflict Resolution and Prevention*. New York: St. Martin's Press.

Zartman, W. (1991). Conflict reduction: prevention, management and resolution. In F. Deng & W. Zartman (Eds.), *Conflict Resolution in Africa* (pp. 299-319). Washington DC: The Brookings Institution.